

BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF

RETAIL CLERKS LOCAL UNION #57

Complainant,

-vs-

GREAT FALLS INTERNATIONAL

AUTHORITY

Defendant.

ULP-5-1976

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER.

On March 1, 1976, the Retail Clerks Union, Local #57, filed an unfair labor practice charge with the Montana State Board of Personnel Appeals against the Great Falls International Airport Authority alleging violations of Section 89-1605(1)(a)(b)(c)(d), R.C.M., 1947.

The Retail Clerks Union, Local #57 (herein referred to as the Union) based its charges on:

"That on or about December 4, 1975, the employer by its officers, agents or representatives has threatened reprisal for Union activities, promised benefits to refrain from activities, threatened to demote, threatened to decrease rate of pay to certain employees because of activities engaged in on behalf of the Retail Clerks Union, Local #57, and because they have engaged in concerted activities."

The Great Falls International Airport Authority (herein referred to as the Airport Authority) answered the charge on March 15, 1976, specifically denying each and every allegation.

The Board of Personnel Appeals (herein referred to as the Board) scheduled a hearing on this matter April 8, 1976. After receiving requests for and granting numerous continuances, the Board set a hearing date of June 25, 1976 at which time the hearing was held. As the duly appointed hearing examiner of the Board, I conducted the hearing within the provisions of the Montana Administrative Procedures Act (Sections 82-4201 to

1 82-4225, R.C.M., 1947). The Union was represented by Mr. D.
2 Patrick McKittrick of the firm of McKittrick and Duffy, Great
3 Falls, Montana; the Airport Authority was represented by Mr.
4 John Alexander of the firm of Alexander, Keuning, Miller and
5 Ugrin, Great Falls, Montana.

6 After a thorough review of the entire record of the case
7 including the sworn testimony of a number of witnesses, I make
8 the following:

9 FINDINGS OF FACT

10 1. That on December 4, 1975, a meeting was held between
11 the members of the Great Falls International Airport Police and
12 Mr. Joe Attwood, Assistant Director of the Airport Authority.
13 Police officers in attendance were Grover Botkin, James Wolf,
14 Tim Tabor, Alfred Corrow, John Szydlowski, Bob Setello, Nick
15 Krakalia and Walter Szalaga. The meeting was called by Mr.
16 Attwood in his usual manner, that is to have Sergeant Wolf
17 inform the men. There was some confusion at the hearing about
18 the time of the meeting, but it appears to have been held in the
19 early afternoon. Some of the officers present were taken off
20 duty to attend. The officers were not told previously whether
21 or not their attendance at the meeting was mandatory, however,
22 testimony indicated that personnel were informed at the meeting
23 that they were free to leave. Mr. Attwood had asked Sergeant
24 Wolf to have the meeting arranged for a convenient time.

25 2. Mr. Attwood presided at the meeting and stated at the
26 outset that his purpose was to discuss the "advisability or
27 inadvisability of joining the Retail Clerks Union ". Prior to
28 the meeting, Mr. Attwood sought the advice of Mr. Paul Miller,
29 attorney for the Airport Authority, as Mr. Miller was more
30 widely versed in the field of labor law and Mr. Attwood was
31 somewhat unsure of the role he could legitimately play.

32 3. Mr. Grover Botkin, one of the airport policemen who

1 attended the meeting, in affidavit and testimony asserted his
2 impression that Mr. Attwood was attempting to discourage Union
3 affiliation. Three other policemen, James Wolf, Albert Corrow,
4 and Tim Tabor, testified that they did not feel intimidated or
5 coerced by Mr. Attwood during the meeting. Mr. Attwood did
6 question the officers' interest in the Union rather than in an
7 organization more closely aligned with their trade, and stated
8 that he felt a small group such as the airport police could
9 deal more effectively directly with management rather than
10 through an intermediary.

11 4. Numerous questions were asked at the meeting and during
12 the course of the questioning Mr. Paul Miller was asked to join
13 the meeting to answer some questions as it was felt by some of
14 the officers that a lawyer should answer questions relative to
15 state law. Two questions caused the most confusion.
16 They were:

17 a) The question of layoffs. The men were concerned about
18 the secondary effects of an airline strike and wanted to know
19 if they could be protected from layoff if the airlines struck.
20 In answer, Mr. Miller directed them to Section 59-1603(2)(c),
21 R.C.M., 1947, referring to the employer's right to conduct his
22 business in an efficient manner. This was Mr. Miller's only
23 reference to a specific state law.

24 b) The question of seniority. The men were concerned
25 about the effect Union membership would have on promotions. The
26 question of seniority was raised and discussion ensued about
27 seniority versus merit as the deciding factor in making pro-
28 motions. Mr. Attwood told the men that every contract he had
29 seen contained a seniority clause, that promotions must be
30 offered to the senior man. Mr. Miller testified that he did
31 not invoke state law in reference to the matter of seniority
32 and stated further that he knew of no law which would

1 dictate promotion procedures. Testimony at the hearing
2 indicated that the officers understood that a clause could be
3 included in any contract they chose stating that merit would
4 be the primary promotional factor. The officers, however, were
5 left with the impression that Sergeant Wolf may lose his
6 "stripes" because, while he held the highest rank, he was not the
7 senior man.

8 DISCUSSION

9 The charges we are to consider stem from the December 4,
10 1975, meeting called by Mr. Attwood and attended by members of
11 the airport police. Statements and actions surrounding this
12 meeting, individually and collectively, are the basis on which
13 the complainant bases the unfair labor practice charge.

14 1. It was the opinion of Mr. Botkin that the purpose of
15 the meeting was to dissuade the policemen from affiliating
16 with the Union. This opinion was not supported by the three
17 other officers who were all at the meeting and who testified
18 that they in no way felt pressured, intimidated or coerced.

19 2. The meeting was called by Mr. Attwood and the men were
20 not told that attendance was not mandatory. The men were,
21 however, told at the meeting that they were free to leave. Some
22 officers were taken off duty to attend the meeting, some were
23 not on duty. In a situation such as the one which exists at the
24 airport where there are three shifts, around the clock, there
25 would be no time that all employees would be either all on or
26 all off duty and the meeting appears to have been held at the
27 most convenient time for all involved.

28 3. The complainant charged that Mr. Attwood indicated an
29 unwillingness to bargain with the Union, should the men choose
30 to join. This seems to have been raised by his statement that
31 he felt it would be easier for a small group, such as the police,
32 to deal directly with management rather than through an inter-

1 mediary. His testimony, however, showed an understanding of
2 his legal obligation to bargain in good faith with the
3 authorized representative of the unit, who ever they chose.

4 4. The complainant charged that Mr. Attwood spoke
5 derogatorily of Mr. Joe Meyer, a representative of the Union.
6 The preponderance of credible testimony does not support this
7 allegation.

8 5. Mr. Attwood questioned the officers' choice of the
9 Retail Clerks as the appropriate representative of a unit which
10 has a professional similarity to a different union or associa-
11 tion. Testimony indicates that he was inquiring into the
12 officers' motivation and was not attempting to dissuade
13 affiliation with the Union, nor was he encouraging membership
14 in an alternate organization.

15 6. The men of the proposed unit (the airport police)
16 were understandably concerned about job security, specifically
17 in the situation of an airline strike. In the past, airport
18 police had suffered layoffs in conjunction with such strikes
19 and the men wondered about what protection the Union could
20 provide. Mr. Miller, the Airport Authority attorney was asked
21 to answer this query and he referred to Section 59-1603(1)(c),
22 R.C.M., 1947, which states:

23 (2) Public employees and their representatives
24 shall recognize the prerogatives of public
25 employers to operate and manage their affairs
26 in such areas as but not limited to: (c) relieve
27 employees from duties because of lack of work or
28 funds or under conditions where continuation of
29 such work be inefficient or nonproductive.

30 Mr. Miller's opinion, as expressed to the officers, was that
31 if an airline strike occurred, and activity at the airport
32 subsequently curtailed, there would be a lack of work and manage-
ment could legally relieve the officers from duty regardless of
whether or not they were affiliated with the Union. I concur
with Mr. Miller's interpretation of the law.

1 7. The most serious charge under consideration is that
2 Mr. Miller allegedly misrepresented state law in answering a
3 question relating to promotions and seniority.

4 A question arose at the meeting as to how promotions would
5 be decided if the officers joined the Union. Mr. Atwood
6 answered that in his limited experience with labor contracts
7 his impression was that they all contained a clause specifying
8 that promotions would go to the senior man. This brought
9 about speculation that Sergeant Jim Wolf, who was the supervisor
10 but had less seniority than some others, would be demoted if
11 the unit affiliated with the Union and his rank given to the
12 senior man.

13 Mr. Miller was asked if any state law governing seniority
14 and promotions. He testified that he did not refer to any law
15 relating to this topic and indeed that he knew of none.
16 Credible testimony supports Mr. Miller's testimony although
17 some confusion surrounded this point throughout the hearing.

18 A number of the officers at the meeting received the
19 impression that while Sergeant Wolf would not necessarily lose
20 his "stripes" as a result of Union membership, there was a
21 possibility that he could. While testimony showed that the
22 officers' sentiments toward the Union were not influenced by
23 this impression, and Sergeant Wolf, the man who would be most
24 effected, testified he wasn't influenced, I feel that Mr.
25 Miller, with his extensive knowledge of labor law, should have
26 made it clear to all present at the meeting that union affilia-
27 tion would not alter the existing hierarchal structure.

28 In my opinion the law has not been violated. Certainly
29 mistakes were made and misunderstandings were allowed to
30 continue but there is no evidence that these minor variations
31 from a preferred course had any effect on the rights guaranteed
32 to the officers of the airport police under the law.

1 CONCLUSIONS OF LAW

2 The allegations made by the Union in the matter of the
3 Retail Clerks Union, Local #57, vs. the Great Falls Interna-
4 tional Airport Authority, that the Airport Authority has
5 engaged in unfair labor practices within the meaning of
6 Sections 59-1605(1)(a)(b)(c)(d), R.C.M., 1947, have not been
7 sustained by the Union.

8 RECOMMENDED ORDER

9 The unfair labor practice charge filed by the Retail
10 Clerks Union, Local #57, against the Great Falls International
11 Airport Authority of March 1, 1976, is hereby dismissed.
12 Dated this 30th day of September, 1976.

13
14 BOARD OF PERSONNEL APPEALS

15
16 BY Jeff Andrews
17 Jeff Andrews
Hearing Examiner

18 CERTIFICATE OF MAILING

19 * * * * *

20 I, Vonda Brewster, hereby certify and state that I did on
21 the 30th day of September, 1976, mail a copy of the above Findings
22 of Fact, Conclusions of Law and Recommended Order to the following:

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